

Service Date: December 16, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF MONTANA-DAKOTA)	UTILITY DIVISION
UTILITIES COMPANY, Application)	
for Authority to Implement the)	DOCKET NO. 91.5.18
Gas Cost Tracking Adjustment)	
Procedure.)	ORDER NO. 5570e
_____)	

FINAL ORDER

* * * * *

APPEARANCES

FOR THE APPLICANT:

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FOR THE INTERVENORS:

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FOR THE COMMISSION:

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Ron Woods, Rate Analyst, 1701 Prospect Avenue, Helena,
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BEFORE:

Danny Oberg, Chairman
Bob Anderson, Commissioner
John Driscoll Commissioner
Wally Mercer, Commissioner
Ted Macy, Commissioner

INTRODUCTION

1. Montana-Dakota Utilities Company (MDU) has a semiannual Gas Cost Tracking Adjustment Procedure (tracker), approved by the Montana Public Service Commission (PSC) as provided in MDU's tariffed Rates 87 and 88. This Order concerns three of those trackers (Fall 1990 Docket No. 90.11.75, Spring 1991 Docket No. 91.5.18, and Fall 1991 Docket No. 91.11.51), all consolidated under PSC Docket No. 91.5.18.

2. MDU has two additional trackers (Spring 1992 Docket No. 92.5.20 and Fall 1992 Docket 92.11.63) pending before the PSC. This Order does not directly concern those trackers. However, to preserve any required continuity in MDU operations and rates, an interim order concerning these two trackers will issue simultaneously with this Order, or as close thereto as possible.

3. This Order is final for all substantive purposes, except for one, later-identified, issue concerning MDU's gas supply contracting that is reserved for further PSC inquiry. Accordingly, any rates approved by this Order must be interim, but on that basis alone and no others.

BACKGROUND

4. On November 1, 1990, MDU filed with the PSC the first application to implement its tracker mechanism that is being considered in this Order. The application was initially designated Docket No. 90.11.75. MDU's documents accompanying the filing supported an adjustment that would have generated approximately \$4.4 million in additional revenues during the proposed rate effective period.

5. On December 7, 1990 the PSC issued Order No. 5524, an interim rejection of MDU's application. The PSC rejected MDU's filing on the basis that it was not in compliance with previous Order No. 5490 (PSC Docket No. 87.7.33, September 24, 1990) and did not incorporate additional information formally requested by the PSC in an October 3, 1990 letter. Order No. 5524 provided that MDU should, within 15 days after approval of the order, refile its application, correcting the noted deficiencies.

6. On January 15, 1991, MDU filed a revised application incorporating the information required by Order No. 5490 and the information requested by the October 3, 1990 letter. On February 4, 1991, the PSC issued Order No. 5524a, vacating the order

rejecting MDU's initial tracker application. It also provided that the revised application would be treated as if filed in compliance on November 1, 1990.

7. In these applications MDU proposed an alternative of no change in rates for recovery of increased gas costs. This proposal was made because of a then-pending decision of the Federal Energy Regulatory Commission (FERC), on a Williston Basin Interstate Pipeline (WBIP) matter which, in all likelihood, would result in substantial refunds to MDU.

8. On May 1, 1991 MDU filed another semiannual application to implement its tracker. This was designated Docket No. 91.5.18. MDU's documents accompanying the filing supported a gas cost tracking adjustment that would have generated approximately \$1.8 million in additional revenues during the proposed rate effective period. Because of the still-pending decision of FERC, on the WBIP refund matter, MDU again alternatively proposed no increase in rates to its subscribers. The use of Docket No. 90.11.75 (MDU's Fall, 1990 tracker), except for reference purposes, was discontinued and the underlying application was consolidated into Docket No. 91.5.18, for case management purposes.

9. On November 1, 1991, MDU filed another semiannual application to implement its tracker. This application was initially designated Docket No. 91.11.51. MDU's documents accompanying the filing supported a gas cost tracking adjustment that would generate approximately \$4.8 million in additional revenues during the proposed rate effective period. The use of Docket No. 91.11.51 was also discontinued, except for reference purposes, and the application was consolidated into Docket No. 91.5.18.

10. Intervention has been granted to the Montana Consumer Counsel (the MCC). The MCC has been and remains the only intervenor in this matter. Procedural orders and modifications have been issued. Various motions have been made and disposed of. On March 20, 1992, the PSC issued Order No. 5570a, identifying eight issues for additional testimony from the parties.

11. On March 25, 1992, the PSC issued Order No. 5570b

denying MDU's request for authority to implement, on an interim basis, increased rates for its Montana customers. In Order No. 5570b the PSC determined that it could not reasonably conclude, based on the available information, that MDU would be entitled to rate relief at the time of any final order. MDU has not been awarded any interim relief in these dockets.

12. On August 18, 1992, after proper notice, a public hearing was held in the PSC offices, 1701 Prospect Avenue, Helena, Montana. At the close of the hearing a briefing schedule was established and briefs have now been received.

FINDINGS OF FACT

Preliminaries

13. During the public hearing on MDU's application to recover increased gas costs MDU presented the testimony and exhibits of: Joseph Maichel, President, MDU; Eugene Anfinson, Gas Distribution Manager, MDU; Donald Hamann, Gas Supply Manager, MDU; Donald Ball, Regulatory Affairs Manager, MDU; and Richard Johnson, Consultant, MDU. The MCC presented the testimony and exhibits of George Donkin, expert witness. No public testimony was offered or received during the proceeding.

14. In its opening brief MDU identifies six contested issues that exist between MDU and the MCC. The MCC agrees that these are the issues. The contested issues raised in the prefiled testimony of the parties, and now under consideration by the PSC, are as follows.

1. Whether take-or-pay (TOP) charges billed to MDU by WBIP should be eliminated from the gas cost tracking adjustment procedure and included in or deferred to a general rate filing instead;

2. Whether MDU should be required to absorb, against stockholders' equity, some portion of the TOP charges billed it by WBIP;

3. Whether MDU should have converted more of its firm sales reservations on the WBIP system to firm transportation reservations and purchased more

third party gas;

4. Whether the PSC should consider directing MDU to initiate a plan to effect an interconnection with Montana Power Company (MPC) at Billings, Montana, and, if the company fails to do so, should consider placing MDU on notice that its recoverable purchased gas costs in the future will be limited to the levels that would have been obtained had bypass been achieved;

5. Whether the PSC should disallow \$480,000 in gas costs for the 1990-1991 winter heating season, and an adjustment also be made for the 1991-1992 winter heating season according to the same calculation as for 1990-1991 but using 4 million dekatherms of gas; and

6. Whether the existing MDU tracking mechanism should be eliminated in favor of purchased gas costs being treated the same as other components in general rate proceedings.

15. The PSC agrees with the parties that the above identified issues are the contested issues on which the parties wish the PSC to make a ruling. The above enumerated issues, however, are not all inclusive of the matters at issue in this proceeding. There are other relevant matters on which testimony and evidence was received that are not included in the parties' list of issues. The PSC will not surrender its affirmative duty, to ensure a balancing of utility and consumer interests, by limiting the scope of this Order to issues as defined by the parties.

16. However, in this docket the remaining issues do not have any impact on the outcome of this matter, for a number of reasons which will be explained later, and rendering an elaboration on this point of what the "issues" are would be inconsequential. As the parties are aware, PSC Docket No. 90.7.44, commonly referred to as the "due process docket" is the

proper place to decide the matter of "issues" and provide the reasoning thereon. Insofar as this point needs further elaboration, it will be included in the outcome of that docket.

TOP as a Proper Tracker Issue

17. The MCC's witness, George Donkin, in his prefiled testimony of January 31, 1992, provides the PSC with his rationales for proposing elimination of TOP charges from consideration in a tracking adjustment. The following summarizes the rationales provided.

1. Purchased gas adjustment (PGA) procedures were implemented in the 1970's when gas costs were volatile and unpredictable and constituted a very high percentage of total costs. When originally implemented it was generally recognized that PGA's were designed primarily for recovery of variable costs that change between general rate cases, wellhead prices, changes in gas mix or changes in total gas purchases.

2. At FERC, where PGA clauses were first approved, and also in several states, not all costs paid to gas suppliers have been recoverable via the PGA. Examples of costs excluded from the PGA are, prepayments for gas not purchased as required under TOP provisions of a contract; lump-sum, buy-out payments to producers in lieu of prepayments under a TOP provision; and lump-sum, buy-out or buy-down payments made to extinguish or reform purchase obligations under a contract. At FERC, rulings on the eligibility for cost recovery of these TOP related costs are in a general rate proceeding.

3. FERC's TOP policy should be adopted by the PSC and applied to MDU for the following reasons: first, unlike wellhead prices, TOP costs are neither especially volatile nor unpredictable and should not be recurring indefinitely; second, allocation

of TOP costs to the various customer classes is more properly dealt with in a general rate proceeding; and third, for the last five years a major risk for local distribution companies (LDC) has been the possibility that a significant portion, if not all, of costs associated with TOP might be disallowed for passthrough.

Consequently, it is appropriate to require an LDC to make a complete cost and revenue showing that includes an examination of the allowed common equity return, so as to assure its overall rate levels are reasonable prior to allowing the pass through of TOP.

18. Based on the preceding rationales Mr. Donkin recommended that the PSC disallow MDU's request to recover, through the tracker adjustment, TOP costs paid WBIP. He urges the PSC to review TOP costs that may be recoverable from Montana ratepayers in the context of general rate filing. If Mr. Donkin's recommendation to exclude TOP costs from consideration is accepted MDU's revenues would be reduced by approximately \$4.6 million.

19. MDU's witness, Don Ball, in his prefiled rebuttal testimony of July 13, 1992, provides the response to Mr. Donkin's proposal that TOP costs be removed from the gas cost tracking adjustment. MDU asserts that TOP costs are a cost component properly considered in a gas tracking adjustment. The following summarizes the reasons given by MDU in support of TOP costs being considered in a gas tracker and why Mr. Donkin's proposal is unfair and unreasonable.

1. The pipeline charges at issue (TOP) are FERC-approved charges, direct billed to WBIP customers or recovered through WBIP sales and transportation rates.

2. The PSC in its MPC Docket No. 85.12.52, allowed recovery of TOP costs through the gas cost tracking procedure.

3.MDU interprets the provisions of Rate 88 as requiring MDU to include TOP costs as a component of its gas costs for recovery purposes.

4.During the period covered by these tracker filings MDU received a \$28.7 million lump sum refund from WBIP that Mr. Donkin is not proposing to back out of the tracker adjustment. In other words the MCC is proposing that lump sum credits from WBIP be expeditiously flowed through to MDU customers but lump sum debits should be backed out and made part of a general rate case.

5.Mr. Donkin did not identify any cost allocation problems that require a general rate filing. He merely hypothesizes there might be some cost allocation problems. Rate 88 specifies that all tracking adjustment gas costs are to be allocated volumetrically. Two-thirds of the WBI TOP costs are billed on a commodity basis. The remaining one-third directly billed to MDU was allocated in identical fashion as the direct refund from WBI. Mr. Donkin is suggesting that the tracking adjustment efficiently allocates credits but inefficiently allocates debits.

6.Once TOP costs become part of the pipelines cost-of-service, chargeable to its customers under a FERC approved tariff, these costs are no longer business decisions. Each component part of the pipeline's rate becomes part of the pipeline customer's cost of purchasing gas.

20. MDU points to one occasion when the PSC decided that TOP costs were properly recoverable through a tracking procedure and relies, in part, on this decision, to support its position that TOP costs are a tracker cost (MPC Docket No. 85.12.52). This precedent is not applicable to MDU, because the facts and circumstances that gave rise to that decision are not analogous

to those of MDU.

21.As additional support for its contention that TOP costs are indeed a cost being recoverable through the tracker adjustment MDU provides its interpretation of Rate 88. The PSC's interpretation of Rate 88 is not the same as MDU's. MDU's approved Rate 88, provides for potential inclusion of extraordinary costs. Examples of extraordinary costs, per the rate schedule, are penalty charges and take-or-pay charges, as long as they are clearly identified and separately supported. The PSC does not interpret this to mean that those costs are automatically included for recovery under the tracking adjustment. The decision to include or exclude TOP costs, or any other extraordinary item, from consideration in a gas tracker adjustment is purely a policy decision to be decided on a case by case basis.

22.Mr. Donkin's proposal that the PSC adopt the FERC policy and consider TOP costs only in general rate proceedings contains dubious logic. FERC excludes TOP costs from PGA's for an interstate pipeline because it is required to review the business decision (prudence) that gave rise to the incurrence of the TOP costs, before those costs may become part of the wholesale gas cost or transportation rate. In the PSC's view no analogy can be drawn between FERC's policy of doing a prudence review of business decisions, and the PSC's reviewing the prudence of MDU's business decision to pay FERC approved TOP costs to its interstate pipeline. The manner in which TOP costs are incurred is totally different. The cost incurred by the pipeline is discretionary and therefore, subject to review, while the cost incurred by the customer (MDU) is mandatory per the pipeline company's tariff.

23.Mr. Donkin's testimony reveals that the witness wants the PSC to treat TOP refunds and TOP payments in a dissimilar fashion. He wants the PSC to recognize the consumer benefits of gas cost reductions occasioned by refunds through the tracking adjustment, while wanting it to withhold ruling on TOP payments, a gas cost increase, until a general rate case has been concluded. Equity and fairness dictate, whether a refund or a payment, TOP charges should be treated in a consistent manner.

24. The PSC finds the MCC's arguments for TOP cost exclusion in the tracker mechanism to be unconvincing and inconsistent. The PSC further finds that MDU's rebuttal testimony neutralizes the arguments made by the MCC. The PSC finds that TOP costs can and should be considered a cost component in the gas tracking adjustment procedure.

TOP Sharing

25. Relevant to the tracker applications, MDU has incurred costs through charges billed to it by WBIP for TOP. These are not MDU-incurred TOP, but WBIP-incurred TOP being passed through to MDU. There is no question of prudence in MDU in incurring these charges--there is no indication that MDU had any choice or realistic options in the matter.

26. Given this, the issue of whether MDU should be required to share, or absorb, a portion of the charges billed it by WBIP, appears to be purely an issue of law, settled predominantly in a fashion compelling no sharing. In the applicable law the PSC finds no provision that even allows, let alone compels, the PSC to order some form of sharing under the circumstances.

27. WBIP, an interstate pipeline and MDU's principal gas supplier, has settled its TOP problems before FERC, essentially settling away a part, absorbing a part, and distilling the remainder of its TOP obligations into a part which is passed through to customers, like MDU, pursuant to FERC-approved tariffed rates (FERC/WBIP RP90-137). The filed rate doctrine precludes PSC review. See, *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953, 74 PUR 4th 464 (1986). The only possible exception known, which pertains in cases where prudence reviews are made, does not apply as there is no prudence question. See, *Pike County Light and Power v. Pennsylvania Public utility Commission*, 77 Pa. Cmwlth 268, 465 A.2d 735 (1983).

28. The PSC concludes that, although FERC orders on the topic of TOP did contain some encouraging language on "equitable sharing" and state agency involvement in reviewing TOP charges (FERC Orders 500 and 528), the PSC cannot reasonably determine that FERC created any exception to the filed rate doctrine under the circumstances present before the PSC. No sharing can be ordered of MDU by the PSC in this instance.

Contracting for Gas Supplies / Imputing Disallowance

29. In 1990 and 1991 MDU had the opportunity to convert additional volumes of its WBIP contract demand to alternative suppliers. MDU represented that its efforts to negotiate alternative supply contracts with independent suppliers were

unsuccessful. Because the independent supply negotiations were unsuccessful MDU chose to continue contract demand from WBIP for these volumes.

30.Mr. Donkin in his prefiled testimony of January 31, 1992, criticized MDU for failing to consummate 3rd and 4th increment supply conversion contracts. Because MDU failed to convert additional contract demand volumes to independent suppliers MDU's gas acquisition practices became an issue in this docket. The PSC requested additional testimony on the 3rd increment conversion supply proposals and negotiations. The PSC in its Order Identifying Additional Issues, (Order No. 5570a) included the following findings and requests to the parties on the 3rd increment conversion:

MDU rejected all responses to its request for proposals (RFP) on obtaining a 3rd increment of non-WBI gas supplies. In response to Commission staff data requests MDU indicated that, even though the cost of gas proposed by respondents was less than WBI's, they rejected all offers. MDU stated the respondents failure to substantiate reasonable reliability of the gas supplies offered at the various receipt points and reliability, along with price considerations, was MDU's main reason for rejecting the offers. Documents provided in response to data requests appear to contradict MDU's rationale for declining to accept any of the proposals.

A letter response from Western Gas Processors appears to adequately address any concerns that MDU should have regarding reliability of the gas supply to be provided under the 3rd increment of conversion. A copy of the letter is attached as Appendix 1. MDU's specific reliability concerns regarding responses of potential suppliers of the 3rd increment of conversion should be more fully developed by MDU.

For each response to the 3rd increment RFP, provide a copy of the response, all documents generated

or received by MDU regarding the RFP response, and a copy of the original analysis and reports prepared by MDU regarding the viability of the supplier's RFP response.

MDU's decision to reject all prospective supplies offered by RFP respondents because of price and/or reliability should be supported by credible testimony. MDU's testimony supporting its decision to reject offers because of reliability should not be limited to the details contained in the RFP responses. The testimony should reference all considerations, along with appropriate documentation in MDU's possession, that were used to reach the conclusion that price and reliability were not sufficient to support a supply conversion.

31. Even though the PSC received additional testimony from the parties on the 3rd increment of conversion, i.e., the prudence of MDU's gas acquisition decision, the PSC finds the testimony inconclusive as to the prudence of MDU's decision. Given the significant potential revenue impacts of this decision and the PSC's duty to ensure that the interests of MDU and the ratepayers are fully protected, the PSC finds that this issue warrants further development.

32. The PSC therefore reserves ruling on the prudence of MDU's gas acquisition practices as they relate to the 3rd and 4th increments of conversion. By January 31, 1993 the PSC will issue a procedural schedule that outlines the additional information required from the parties on this matter. A ruling on the prudence of MDU's gas acquisition practices is a necessary precursor to a specific revenue adjustment in this docket. Therefore, no final revenue adjustment is warranted at this time.

33. It will take some time to finally resolve any potential revenue impacts associated with the 3rd and 4th increments of conversion. This being the case, if the PSC does not issue an interim rate decision allowing recovery of some of the balance in MDU's deferred gas account, the balance in that account will continue to increase. The balance in the deferred gas cost

account is already quite large. Therefore, to mitigate the potential rate impacts on consumers, the PSC will issue an interim order in MDU's current gas cost tracking adjustment.

Billings Interconnect with MPC / Imputing Disallowance

34.Mr. Donkin, using cost and volume information provided by MDU, developed an annual cost saving that could potentially be achieved by MDU if it bypassed WBIP at Billings, Montana. In his testimony Mr. Donkin calculated that bypassing WBI at Billings would result in a total gas cost of \$2.008 per Mcf. Mr. Donkin also calculated an average cost of WBIP sales service for the Billings market of \$4.196 per Dk. Using the difference between these two numbers Mr. Donkin asserts that MDU could achieve annual savings in excess of \$8 million.

35.The \$8 million cost saving did not consider WBIP's regulated status and its ability to file a request with FERC for authority to reallocate and recover all displaced fixed costs. Recognizing that FERC could potentially authorize full recovery of all displaced WBIP fixed costs from a Billings bypass Mr. Donkin calculated savings under a scenario containing that assumption. He calculated that MDU could still achieve annual savings of approximately \$1.9 million on a volume of 4 Bcf.

36.Based on the preceding calculations the witness recommended that the PSC consider directing MDU to make an interconnection with MPC at Billings. He also recommended that if MDU failed to make the interconnect that the PSC place MDU on notice that its recoverable gas costs in future proceedings would be limited to the levels MDU would have obtained had bypass of WBIP been achieved.

37.In rebuttal to Mr. Donkin's Billings bypass proposal, MDU presented the testimony of Don Hamann. Mr. Hamann asserted that the premises on which the MCC predicated its Billings bypass proposal were erroneous. He indicated it was erroneous because the alternate source of supply proposed in the bypass presentation did not exist and the savings calculation included computational errors.

38.MDU's witness testified that the MPC supply included in the bypass proposal did not exist. The witness stated that MPC did not have firm transportation capacity on the southern end of

its system which leads to its Dry Creek storage field and its interconnection with Colorado Interstate Pipeline Company. In support of his statement that firm transportation was not available MDU produced two MPC documents that were sent to potential shippers on the MPC system. A review of these two documents reveals that MPC was making available two forms of transportation service: "interruptible transportation" and "off-peak transportation". Interruptible transportation service warrants no explanation; off-peak transportation does. As stated in the MPC offerings, off-peak transportation is firm transportation subject to no more than 14 days of service interruption in a contract year, when necessary to serve MPC on system core markets.

39.The MPC notices state that, during the winter heating season when MDU needs firm transportation and supplies, the "firm" service offered by MPC is subject to interruption. The PSC needs to do no further analysis to make a finding on the reasonableness of MCC's bypass proposal. The assumption of the MCC's witness that MPC could provide a firm source of supply for MDU's Billings market is wrong. Therefore, the proposal is invalid. The PSC rejects the MCC's proposal that MDU be directed to interconnect with MPC at Billings.

Continuation of MDU's Tracker

40.In its order identifying additional issues, the PSC requested the parties to comment on the existing gas tracking adjustment procedure for the purpose of ascertaining whether the tracker adjustment should be continued as is, modified, or abolished. The following are the pertinent order sections defining the areas on which the PSC requested comment:

The gas cost tracking mechanism for MDU was approved by the Commission in Order No. 4476a issued 5/30/79. At the time the tracker was approved, MDU was a vertically integrated natural gas (gas) utility. In January, 1985 a corporate reorganization resulted in MDU becoming a local distribution company (LDC) with an affiliated interstate pipeline company, Williston Basin Interstate Pipeline (WBIP), becoming its supplier of natural gas.

Based on facts and circumstances that existed in 1979, the Commission authorized the implementation of a gas cost tracking mechanism for MDU. The Commission requests testimony on the issue of whether or not the conditions that existed in 1979, which warranted implementation of the gas tracking mechanism, still exist. If such conditions no longer exist, testimony should support a rationale for continuation of the gas tracker mechanism as it presently exists.

The Commission, in its Order No. 5490, discussed the economic impacts of the affiliate relationship on rates paid by MDU's customers and the option of MDU to convert to lower cost gas suppliers through the phase-in of open access on WBIP. The economic concerns expressed by the Commission relative to these issues are still valid in this docket given MDU's decision not to implement the 3rd and 4th increment of conversion. The Commission requests testimony regarding conditions (e.g., business principles, incentives, safeguards) embodied in the existing tracker mechanism that would provide an incentive or disincentive for MDU to discharge its public utility obligation of providing reasonably adequate service at lowest reasonable costs. If the existing tracker mechanism fails to embody conditions that would promote prudent gas acquisition practices, testimony should address potential modifications to the tracker that would ensure MDU has proper regulatory incentives to discharge its public utility obligation. If a tracker mechanism cannot be crafted that would serve to assure such incentives, testimony should provide reasonable alternatives that could facilitate MDU's discharge of the public utility obligation.

41. The issue of continuing MDU's gas tracking procedure, given present natural gas markets, was addressed by the parties. MDU supported continuation of the present gas cost tracking

adjustment procedure while the MCC proposed its abolition. If business as usual in the natural gas industry had continued as it existed at the time of Order No. 5570a, the record evidence tends to support a determination that MDU's gas cost tracking adjustment should be abandoned.

42. Business as usual, however, has not continued in the natural gas industry. FERC has issued Orders No. 636 and 636a, restructuring the industry and changing the relationship between interstate pipelines and their customers. Large uncertainty exists relative to the financial and operating consequences that the orders might have on the natural gas industry. The testimony supporting discontinuance of the tracker adjustment procedure embodies the pre-Order 636 operating environment and does not quantify the operating and financial implications that the latest FERC decision might have on MDU. Given the uncertain operating environment and financial impacts on MDU and its ratepayers, for the time being, the PSC defers consideration of abolishing the tracker adjustment to a future time, if questions should arise then. MDU's tracker remains in effect.

Miscellaneous Issues

43. In its order identifying additional issues the PSC requested that the parties provide testimony on the following issues: development of traditional or non-traditional storage; company owned gas supplies; gas acquisition strategy; alternative pipeline connections; gas supply acquisition department; and proposed gas contract evaluation. The PSC will provide no comment on these issues at this time as separate substantive issues. For the most part they are forward-looking issues, not contested between the parties, and now have a potential to become moot and, in any event, are now speculative at best as a result of the issuance of FERC Orders No. 636 and 636a.

CONCLUSIONS OF LAW

1. All preliminary matters and Findings of Fact that properly can be considered as Conclusions of Law and should be so consider to preserve the integrity of this Order are incorporated herein as an Conclusions of Law.

2. MDU is a public utility as defined in Section 69-3-101,

MCA. The PSC properly exercises jurisdiction over MDU's rates and service pursuant to Section 69-3-102, MCA.

3.The PSC has provided adequate public notice and an opportunity to be heard as required by Section 69-3-303 and Title 2, Chapter 4, MCA.

4.The rates and rate structure approved in this order are just and reasonable as required by Sections 69-3-201 and 69-3-330, MCA.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. All Conclusions of Law that properly can be considered an Order and should be so consider to preserve the integrity of this Order are incorporated herein as an Order.

2. Montana-Dakota Utilities Company shall implement its Gas Cost Tracking Procedures as applied for in Docket Nos. 90.11.75, 91.5.18, and 91.11.51, rates implemented remaining interim pending the outcome of the reserved issue on contracting for gas supplies, and in conjunction with an Interim Order issued, or soon to be issued, in tracker Docket Nos. 92.5.20 and 92.11.63.

3. This Order is final for all purposes except the reserved issue and rates as might be affected by the proper outcome of that reserved issue.

Done and dated this 15th day of December, 1992, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE:Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM. •